IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.253 OF 2002

The Commissioner of Income Tax
Mumbai-III .. Appellant.
V/s.
M/s.Karnataka Explosives Ltd. .. Respondent.

Mr.K.R. Chaudhary i/b. H.D. Rathod for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 31ST AUGUST, 2004.

P.C. :

Heard Mr.K.R. Chaudhary, the learned counsel for the revenue.

2. Though in the memo of appeal it is stated that the department filed Income Tax Application under Section 256(2) with regard to the assessment year 1982-83, during the course of motion hearing, the learned counsel submitted that he does not have definite information in that regard and he is not in a position to make statement that reference application under Section 256(2) for the assessment year 1982-83 raising the question of depreciation allowance was filed by the department.

3. The Income Tax Appellate Tribunal in its

order observed thus :

> "2. The first ground of appeal is raised as under :
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> . 'On the facts and in the circumstances of the case and in law the learned CIT(A) erred in directing the A.O. to recompute the depreciation allowance following ITAT's decision for A.Y. 82-83 dt.2.11.91 in assessee's case which is not accepted by the Department.
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> 3. The ld.Department Representative accepted that the matter stands covered by the decision of the ITAT dated 2.11.1991 in I.T.A. No.564 (Bom) of 1988 for the assessment year 1982-83, passed in the case of the assessee itself. This ground of the revenue, therefore, fails."

4. Since the learned counsel for the revenue is not in a position to make definite statement before us that the Income Tax Application under Section 256(2) for the assessment year 1982-83 pertaining to the issue of depreciation allowance was filed by the revenue, we find no justifiable ground to interfere with the order of the tribunal.

5. No substantial question of law arises in this appeal.

6. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)